areas of traditional State regulatory primacy. Locke is therefore inapposite.

Defendant's reliance on In re Bridgestone/Firestone, Inc. Tires Products Liability Litigation, 153 F. Supp. 2d 935, 943 (S.D. Ind. 2001)(Bridgestone I), in support of its field preemption argument mischaracterizes the holding of that case. In clarifying its earlier dismissal of recall claims, the court in In re Bridgestone/Firestone, Inc., Tires Products Liability Litigation, 256 F. Supp. 2d 884, 899 (S.D. Ind. 2003)(Bridgestone II), explained that it had dismissed the plaintiffs' claims in Bridgestone I on the basis of conflict, not field, preemption. In the words of the court, "[n]othing in the [MVSA] demonstrates a Congressional intent to completely preempt all claims relating to motor vehicle safety." Bridgestone II, 256 F. Supp. 2d at 899.

The Court therefore denies Defendant's motion to dismiss on the ground of field preemption.

D. Conflict Preemption

Defendant argues for conflict preemption of State injunctive remedies to avoid frustration of Congress' objectives. In support of its argument, Defendant first asserts that Congress' main goal in enacting the MVSA was to ensure uniform federal oversight of motor vehicle defect notification and correction and then argues that the comprehensiveness of the MVSA and the absence of explicit provision of judicial remedies therein indicates Congressional intent to preclude such remedies.

Again, because a presumption against preemption applies in this case, Defendant bears the burden of showing that it was Congress' "clear and manifest" intent to preempt State law. ARC Am. Corp., 490 U.S. at 101. Were there no presumption against preemption in this case, Defendant would still need to demonstrate "clear evidence of conflict" to support its theory that State law is preempted. Geier, 529 U.S. at 885.

1. Frustration of Congressional Objective of Uniformity

Defendant's first argument for conflict preemption, that allowing Plaintiffs to pursue their State law claims would frustrate the Congressional objective of uniform administration of recalls, mischaracterizes Congress' intent in enacting the MVSA. As the Second Circuit pointed out in Chrysler Corp. v. Tofany, 419 F.2d 499, 508 (2d Cir. 1969), "[t]he clearest possible expression of legislative purpose is provided in the first section of the Act itself: 'the purpose of this chapter is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents.' 15 U.S.C. § 1381." Congressional reports support the conclusion that safety is the primary purpose of the MVSA.

> In discussing the promulgation of standards, the Senate Commerce Committee stated that it intended 'that safety shall be the overriding consideration in the issuance of standards under this bill.' [S. Rep. No. 1301 at 2714]. The Conference Report which accompanied the final version of the Senate bill describes the Act as one 'to provide for a coordinated national safety program and establishment of safety standards for motor vehicles in interstate commerce to reduce accidents involving motor vehicles and to reduce the deaths and injuries occurring in such accidents.' Conf. Rep. No. 1919 at 2731.

Tofany, 419 F.2d at 508. "Although Chrysler stresses that Congress decreed uniformity, the clear expression of purpose in section 1381 and the other evidence of legislative intent indicate that the reduction of traffic accidents was the overriding concern of Congress." Id.

Similarly, in Buzzard v. Roadrunner Trucking, 966 F.2d 777, 783 (3d Cir. 1992), the Third Circuit held that State common-law tort claims for defective design of an illumination system were not preempted by the MVSA. The court rejected the defendant's argument that the common law action was preempted because it would frustrate the MVSA's goal of uniformity. Id. The court explained:

> It remains our view, as it was in Pokorny [v. Ford Motor Co., 902 F.2d 116 (3d Cir.), cert. denied, 498 U.S. 853 (1990)], that uniformity was merely a secondary concern to Congress when it enacted the Safety Act. Accordingly, uniformity cannot take precedence over Congress's primary goal of safety, nor can it defeat Congress's intent, as set out in section 1397(k) of the Act to permit state common law to develop more stringent design requirements in the interest of increased safety. Strict uniformity may even interfere with the safety goal, thus frustrating the Act's purpose. Because of the differences in geography and population among the states, varying standards and requirements may be necessary to achieve the same level of safety in different states. See Tofany, 419 F.2d at 511. The common law development of those standards is properly left to the courts of those states. Therefore, even though state common law may have some negative effect on uniformity, it is not preempted.

Buzzard, 966 F.2d 783-84.

Thus, the primary congressional objective behind the MVSA is safety. While legislative history demonstrates a federal interest in uniformity of motor vehicle safety regulation and

administration of recalls, uniformity is at best a secondary goal. Allowing consumers to pursue State remedies for a dangerous manifold defect would likely advance the federal interest in highway safety. Under such circumstances, "some negative effect on uniformity," Buzzard, 966 F.2d 783-84, is not sufficient to constitute the "clear evidence of conflict" with congressional goals required by Geier for conflict preemption, much less to overcome the presumption against preemption by demonstrating Congress' "clear and manifest" intent to preempt State law. ARC Am. Corp., 490 U.S. at 101.

Airbag cases, such as Geier, do not support an assertion of conflict preemption due to frustration of the Congressional intent to achieve uniformity because they hold State claims preempted on the basis of an actual conflict with specific, explicitly enunciated safety standards. Instead, "Geier teaches that the implied preemption question requires careful analysis of whether a particular common law claim would conflict with, or stand as an obstacle to accomplishing the purposes of, a particular Safety Act standard. . ." Harris v. Great Dane Trailers, Inc., 234 F.3d. at 400. The Supreme Court's holding in Geier that State airbag claims were preempted was based on a detailed analysis of actual conflict between the claims at issue and a specific federal safety regulation promulgated thereunder. 569 U.S. at 883.

The plaintiffs in Geier claimed that "to be safe, a car must have an airbag." This claim conflicted with the express purpose of a federal regulation authorized by the MVSA, Federal Motor

Vehicle Safety Standard (FMVSS) 208, which "sought a gradually developing mix of alternative passive restraint devices." 529 U.S. at 886. The Geier Court examined the legislative and regulatory history of FMVSS 208 and concluded that the choice of safety equipment the regulation provided was the result of the Department of Transportation's carefully considered policy decision to allow gradual introduction of safety devices better to meet safety needs and accommodate manufacturers and the public. Id. at 875-81. As the result of a considered policy choice, under FMVSS 208, manufacturers had no duty to install airbags at the time they manufactured the plaintiffs' car, yet the Geier plaintiffs' tort claims relied upon precisely such a duty. Id. at 881. The Court held that allowing a State law tort claim to proceed under these circumstances would in effect impose a safety standard upon manufacturers different than that imposed by the Department of Transportation's well-considered regulation. Id. Geier is distinguishable because there is no substantive regulation at issue in the instant case nor is there language in the MVSA or its legislative history demonstrating that exclusive federal agency administration of injunctive remedies in the field of motor vehicle safety was the considered policy choice of Congress.

2. Interference with the Goal of Providing an Exclusive Federal Remedy

Defendant contends that State law remedies for motor vehicle defects are conflict-preempted because the discretion vested in the Secretary of Transportation under the MVSA and the scope and

detail of the Act's recall provisions demonstrate Congress' intent that these provisions be the exclusive avenue to a recall or equivalent remedy. Defendant asserts that, by not including a judicially administered remedial scheme under the MVSA, Congress indicated its intent that agency action should be mandatory in the first instance and that judicial intervention into the administrative scheme should not be allowed. Defendant argues that Plaintiffs' claim, which it characterizes as a claim for a recall, frustrates congressional objectives because it conflicts with the methods established in the recall provisions of the MVSA.

As discussed previously, Plaintiffs do not necessarily seek a court-initiated recall. The plain language of Plaintiffs' complaint indicates that they seek an unspecified injunctive remedy possibly consisting of uniform notification or inclusion of individual California vehicle owners in Defendant's voluntary fleet recall already underway. The scope of the remedy that Plaintiffs seek is also limited by the reach of the UCL in that they purport to represent only California owners of the subject vehicles.

Defendant argues that § 30162 of the MVSA supports conflict preemption on the basis of exclusive delegation. Section § 30162 provides in relevant part:

> (a) . . . any interested person may file a petition with the Secretary of transportation requesting the Secretary to begin a proceeding . . . (2) to decide whether to issue an order under section 30118(b) of this title.

Section 30118(b) authorizes the Secretary to decide, after any interested persons have had the opportunity to present information and express their views, whether a defect exists. If the Secretary decides there is a defect, he or she is authorized to order manufacturers to notify consumers and remedy it. 49 U.S.C. § 30118 (b). Neither of these sections contains mandatory language to the effect that a petition to the Secretary is a consumer's only means to seek remedies for defective equipment, nor does Defendant point to any such language elsewhere in the MVSA. The plain language of the MVSA indicates the opposite.

As discussed previously, the savings clause at 49 U.S.C. § 30103(d) specifically states that a remedy under § 30118 "is in addition to other rights and remedies under other laws of the United States or a State." Defendant argues that this savings clause cannot preserve the remedy of recalls because that remedy did not exist prior to the 1974 amendments to the MVSA. Contrary to Defendant's assertion, however, case law shows that, prior to enactment of the 1974 recall amendments to the MVSA, courts enforced State-law-based injunctive remedies similar to recalls in the field of vehicle safety. Noel, 342 F. 2d at 237, 242; Braniff, 411 F.2d at 453. As discussed above, the plain meaning of the language in the savings clause at 49 U.S.C. § 30103(d) is that such State law remedies are preserved.

The cases Defendant cites in support of its conflict preemption arguments do not withstand scrutiny.

Bridgestone I is distinguishable on its facts. Bridgestone I found conflict preemption on the basis of frustration of Congress' purpose under the MVSA of providing exclusive administration of recalls through the NHSTA. In Bridgestone I, the plaintiffs purported to represent "[a]ll persons and entities in the United States who own or lease or owned or leased vehicles that are or were equipped with" certain Firestone tires. Bridgestone I, 153 F. Supp. 2d at 938. Thus, any injunctive remedy the Bridgestone I court might have provided would have affected a nationwide group of vehicle owners. As discussed above, Plaintiffs in the instant case represent only California owners of the subject vehicles. If this Court granted some form of injunctive relief to Plaintiffs, that relief would be limited in scope to California vehicle owners. Further, the Bridgestone I plaintiffs asked the court to make an initial declaration that the tires in question were "unreasonably dangerous and defective." The Bridgestone I court based its decision in part on what it stated was Congress' intent to grant exclusive discretion to the NHSTA to determine when a defect is dangerous enough to warrant notification or a remedy. Bridgestone I, 153 F. Supp. 2d at 945.

Plaintiffs in the instant case do not request the Court to make such a declaration regarding the manifolds in question. Presumably, this is in part because Defendant allegedly has already conceded the danger of the manifold defect and instituted a partial recall. In Bridgestone I, there was no recall underway; the plaintiffs asked the court to initiate one.

Id. Here, the gravamen of Plaintiffs' complaint is that the recall Defendant has already initiated simply is not broad enough because it does not include individual consumers. Should Plaintiffs' allegations be borne out, Defendant's failure to include individual consumers in its recall may be enjoined as unfair and fraudulent concealment and an exclusionary practice. Such an order would not constitute a court-initiated recall.

In addition to being distinguishable on its facts, Bridgestone I is based upon reasoning this Court finds unpersuasive. The court in Bridgestone I defined the field in question narrowly as recalls and found that the presumption against preemption did not apply because "States have never assumed a significant role in recalls related to vehicle safety." Id. at 942. On this basis, the Bridgestone I court analogized to Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 331-32 (1981), and Int'l Paper Co. v. Ouellette, 479 U.S. 481, 500 (1987), cases which held laws conflict-preempted because "the administrative systems in place for managing the matters at issue . . . were sufficiently comprehensive that any state law purporting to act in the area was a serious interference with the achievement of the full purposes and objectives of Congress." Bridgestone I, 153 F. Supp. 2d. at 944. The Bridgestone I court applied too broadly the conflict preemption analysis in these cases.

Although Int'l Paper and Chicago & N.W. Transp. Co. concluded that a comprehensive administrative scheme and the granting of significant authority to a federal agency were

sufficient evidence of congressional intent upon which to base a holding of conflict preemption, neither case addressed a situation in which the presumption against preemption applied. The Supreme Court in those cases, thus, did not require "clear evidence of conflict" in order to hold the State laws in question preempted. Both Int'l Paper and Chicago & N.W. Transp. Co. dealt with substantive areas of law historically subject to federal control and this fact was key to the Court's finding of preemption in both instances.

Int'l Paper dealt with a Vermont common law nuisance claim brought against a polluting paper company in New York. 479 U.S. at 481. The Court held the claim preempted due to its conflict with the Clean Water Act (CWA). Int'l Paper, 479 U.S. at 500. That interstate pollution is inherently a realm in which federal authority controls was crucial to the Int'l Paper Court's preemption holding. As the Court stated, "[i]n light of this pervasive regulation and the fact that the control of interstate pollution is primarily a matter of federal law,[] it is clear that the only state suits that remain available are those specifically preserved by the Act." Int'l Paper, 479 U.S. at 492 (citation omitted). The Court did not look at the comprehensiveness of the regulatory scheme in isolation, but rather evaluated its significance in light of traditional federal control over the substantive area of law in question.

Chicago & N.W. Transp. Co. dealt with interstate commerce, also an area of traditional federal authority, and addressed conflict preemption of a shipper's State law claim against a

railroad for inadequate service. 450 U.S. at 313-14. In that case, the Interstate Commerce Commission (ICC) had approved the defendant railroad's application for abandonment of the rail line in question. Id. In holding the State law claim conflict-preempted, the Court stated that

> There can be no divided authority over interstate commerce, and . . . the acts of Congress on that subject are supreme and exclusive. . . . Consequently, state efforts to regulate commerce must fall when they conflict with or interfere with federal authority over the same activity.

Id. at 318-19 (internal quotations and citations omitted). Chicago & N.W. Transp. Co. is thus inapposite to this case, in which an area of historical State primacy is at issue and no agency action has been alleged.

Int'l Paper, and Chicago & N.W. Transp. Co. demonstrate that whether the area in question is traditionally an area of State or federal regulation affects the weight to be given to factors such as comprehensiveness or delegation of authority in determining whether a State law is conflict-preempted because it interferes with a congressional goal. In Int'l Paper, where no presumption against preemption applied, comprehensiveness of the regulatory scheme weighed heavily. This Court disagrees with the Bridgestone I court's assignment of such weight to the comprehensiveness of the MVSA. Because motor vehicle safety is an area of traditional State regulation, the comprehensiveness of a federal regulatory scheme in this area does not weigh as heavily as it did in Int'l Paper and Chicago & N.W. Transp. Co.

Locke, as discussed above, is a conflict preemption case and therefore inapposite Defendant's field preemption argument. It is equally inapposite to Defendant's conflict preemption argument, however, because, like Int'l Paper and Chicago & N.W. Transp. Co., it dealt with an area of traditional federal primacy so the presumption against preemption did not apply. As the Court stated in Locke, in the field of maritime commerce, "there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers" because the federal law in question regulates an area which "Congress has legislated . . . from the earliest days of the Republic." Locke, 529 U.S. at 108-09.

Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363 (2000) is inapposite for much the same reason. Crosby dealt with conflict between State and federal laws providing sanctions against Burma. 530 U.S. 363, 370-71 (2000). Foreign relations is an area traditionally regulated by the federal government, not the States. United States v. Belmont, 301 U.S. 324, 331 (1937). In Crosby, therefore, the Court did not find it necessary to address the issue of the presumption against preemption. Crosby, 530 U.S. at 374 n. 8.

The remaining two recall cases that Defendant cites in support of its conflict preemption argument are no more persuasive. Lilly v. Ford Motor Co., 2002 WL 84603 (N.D. Ill. Jan. 22, 2002), followed Bridgestone I and is distinguishable on its facts and unpersuasive in its reasoning for the same reasons as that case. Namovicz v. Cooper Tire & Rubber Co., 2001 WL

327886 (D. Md. 2001), is inapposite because it held claims for injunctive relief field-preempted, not conflict-preempted.

The remainder of Defendant's authority does not deal with recalls and is also distinguishable. Nathan Kimmel, Inc. v. DowElanco, 275 F. 3d. 1199 (9th Cir. 2002) and Buckman Co. v. Plaintiff's Legal Comm., 531 U.S. 341 (2000) deal with fraud on regulatory agencies. In both cases, "the existence of . . . federal enactments [was] a critical element" of the plaintiffs' claims and therefore such claims should be dealt with under the relevant federal regulatory scheme. Nathan Kimmel, 275 F.3d at 1206 (quoting Buckman, 531 U.S. at 353). This analysis is inapposite to the instant case because Plaintiffs neither base their claims on the MVSA nor allege "fraud-on-the-agency" by Defendant.

Heckler v. Chaney does not deal with conflict preemption at all, but rather stands for the proposition that an agency's decision not to enforce a regulation is not subject to judicial review. 470 U.S. 821, 831 (1985). Plaintiff has not alleged that the NHTSA has considered any alleged violation of any federal regulation and decided not to pursue enforcement. Defendant makes an assertion to this effect in its reply, but provides no supporting information. At this stage of the proceeding, Defendant's unsupported allegation of an NHTSA decision is not a sufficient basis upon which to invoke the bar to judicial review discussed in Heckler as a basis for dismissal.

Defendant thus does not carry its burden to overcome the

presumption against preemption with regard to its conflict preemption arguments because it fails to demonstrate a sufficiently specific "actual conflict" with MVSA provisions, subsidiary regulations, or with congressional objectives for the MVSA. Neither Defendant's argument for preemption based on frustration of the congressional objective of uniformity nor its assertion of conflict due to interference with the comprehensive scheme of the MVSA and its delegation of administrative authority demonstrates the "clear and manifest" intent of Congress as required where, as here, the presumption against preemption applies. ARC Am. Corp., 490 U.S. at 101. Nor do these claims meet the less stringent requirement of showing "clear evidence of conflict" required under Geier to find preemption. The Court therefore denies Defendant's motion for dismissal of Plaintiffs' UCL claim on the ground of conflict preemption.

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss Plaintiffs' UCL claim is DENIED.

IT IS SO ORDERED.

Dated: 3/24/04

/s/ CLAUDIA WILKEN
CLAUDIA WILKEN
United States District Judge